IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
Central Excise Appeal No.137 of 2006

Commissioner of Central Excise. .. Appellant
v/s.
M/s.Aspire Exports Pvt. Ltd. .. Respondent

Mrs.N.V. Masurkar and Mr.S.M.Shah i/by
T.C.Kaushik for appellant.

Mr.Jitu Motwani i/by PDS Legal for res.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 27th September 2006

P.C. :

1. Heard the learned Counsel for the parties.

2. In the present case, the order passed by the CESTAT in Appeal No.E/3739 of 2003 on 24th August 2005 is under challenge. The Authorities below had rejected the claim for refund made by the respondent on the ground of unjust enrichment. The respondent relies upon a judgment in the case of **Parle International Ltd. vs. Union of India reported 2001 (127) E.L.T. 329 (Guj.)** decided by the Gujarat High Court. That submission is accepted and the Appeal filed by the respondent, has been allowed.

3. This Appeal raises the following question

of laws:-

> " Whether the CESTAT was right in allowing the appeal of the respondent particularly when the respondent-assessee failed to discharge the burden of duty has not been passed on to third party under Section 11(B) of the Central Excise Act, 1944 as amended as per the decision of the Supreme Court in the case of M/s.Allied Photographics India Ltd. 2004 (166) ELT 3 (S.C.) and Sahakari Khand Udyog Mandal Ltd. 2005 (181) ELT 328 (SC) ? "

4. The judgment of the Gujarat High Court in Parle International's case (supra) has been reversed by the Apex Court in **Commissioner vs. Parle International Ltd. reported in 2005 (188) E.L.T. 881**. The Apex Court has relied upon two of its earlier judgments one in the case of **Commissioner of C.Ex. Mumbai-II vs. Allied Photographics India Ltd. reported in 2004 (166) E.L.T. 3** and another in **Sahakari Khand Udyog Mandal Ltd. vs. Commissioner of C.Ex. & Cus. reported in 2005 (181) E.L.T. 328**.

5. In view of the above position, we will

have to allow this Appeal. Accordingly, we allow this Appeal and set aside the finding rendered by the Tribunal which is contrary to the law laid down by the Apex Court. The Appeal before the Tribunal will, therefore, stand revived for examining the aspect of unjust enrichment. The Tribunal will decide the revived Appeal as expeditiously as possible.

6. Appeal is allowed in the aforesaid terms.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)